REMARKS

Applicants filed a Petition to Withdraw this application from issue because a publication dated June 1994 was of record but did not appear to have been considered by the Examiner. It is submitted that all pending claims in this application are in condition for allowance because this prior publication does not render any of the claims in the present Reissue Application unpatentable.

Initially, the publication is not prior art as it was not published more than one year before the filing date of the application for Design Patent (D376,183) from which this application claims priority. The filing date of the design application is May 3, 1995, which is less than one year after the June 1994 date of the submitted publication.

Even if the publication constitutes prior art, it does not constitute an "offer for sale" under 35 U.S.C. §102(b). The Federal Circuit Court of Appeals recently clarified the test as to what constitutes an offer for sale under section 102(b).

> Only an offer which rises to the level of a commercial offer for sale, one which the other party could make into a binding contract by simple acceptance (assuming consideration), constitutes an offer for sale under § 102(b).

Linear Technology Corp. v. Micrel, Inc., 275 F. 3d 1040, 1048 (Fed. Cir. 2002), *quoting, Group One Ltd v. Hallmark Cards, Inc.*, 254 F. 3d 1041, 1048 (Fed. Cir. 2001).

Moreover, the Federal Circuit further stated that:

> mere publication of preliminary data sheets and promotional information for the LT 1070 communicates nothing to customers about LTC's intent, and thus cannot be an offer for sale. Such activities only indicate preparation to place the LT 1070 on sale. Preparation alone cannot give rise to an on-sale bar under *Group One*.

Linear Tech, 275 F. 3d at 1050. Here, the publication merely contained promotional information about a product to be released in the future. The publication did not communicate anything to customers about Warrior's intent with respect to any product. This publication only indicated preparation to place its product on sale, which did not occur until a much later time. Further, a person could not make a binding contract from the publication alone and as such it was not a commercial offer.

Accordingly, this publication does not constitute an offer for sale under section 102(b).

Additionally, the publication is not an invalidating printed publication under section 102(b). As set forth above, the application from which the present application claims priority was filed less than one year after the publication. Moreover, to the extent the publication constitutes prior art to the present application the present application finds full and complete support in the design patent application for all features shown in the publication. Therefore, the publication does not constitute invalidating prior art under section 102(b) as to any claim of the present application.

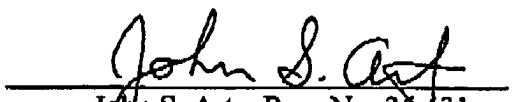
Pursuant to its obligations in connection with reissue applications, the applicants state that the '925 is still involved in a patent infringement lawsuit with J. deBeer & Sons, Inc. A copy of the complaint in that action was previously attached to an earlier response. An answer has now been filed and a copy of that is attached hereto. Discovery has only recently commenced. No documents have been exchanged and no depositions have been taken. deBeer contends it does not infringe the '925 patent, but has indicated that it is not challenging the validity of the '925 patent because it does not have any prior art by which it believes affects the validity of the '925 patent.

It is respectfully submitted that all pending claims 1-85 are in condition for allowance. A Notice of Allowance is therefore earnestly solicited.

If the Examiner should have any questions, he is urged to contact the undersigned at (248) 223-9500.

Respectfully Submitted

ARTZ & ARTZ, P.C.



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